

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

JOHN WECKESSER	§	PLAINTIFF
	§	
v.	§	NO. 1:07CV1027-LG-JMR
	§	
ZURICH ASSURANCE, FRONTIER	§	
INSURANCE ADJUSTERS, PAT	§	
MCCAFFREY, SEA TOW	§	
CORPORATION, JOSEPH	§	
FROHNHOEFER, C.E.O., MATTINA	§	
INSURANCE AGENCY, INC.	§	DEFENDANTS

ORDER OF DISMISSAL WITHOUT PREJUDICE

THIS MATTER IS BEFORE THE COURT *sua sponte*, pursuant to FED. R. CIV. P.

12(h)(3), to determine whether the Court has subject matter jurisdiction over the instant cause.¹

Plaintiff John Weckesser filed this tort action on August 22, 2007, alleging willful negligence, trespass, misrepresentation, and breach of contract under Mississippi law. The diversity statute 28 U.S.C. § 1332, requires "complete diversity" of citizenship: a district court cannot exercise diversity jurisdiction if one of the plaintiffs shares the same state citizenship as one of the defendants. *Whalen v. Carter*, 954 F.2d 1087, 1094 (5th Cir. 1992). The Complaint indicates that Plaintiff and the Defendants Pat McCaffrey, and Mattina Insurance Agency, Inc., are Mississippi residents. Absent complete diversity, the matter must be dismissed. However, Plaintiff is not precluded from bringing his claims in state court.

¹United States District Courts and Courts of Appeals have the responsibility to consider the question of subject matter jurisdiction *sua sponte* if it is not raised by the parties and to dismiss any action if such jurisdiction is lacking. *Giannakos v. M/V Bravo Trader*, 762 F.2d 1295, 1297 (5th Cir. 1985); *Matter of Kutner*, 656 F.2d 1107, 1110 (5th Cir. 1981), cert. denied, 455 U.S. 945, 102 S.Ct. 1443, 71 L.Ed.2d 658 (1982).

Accordingly,

IT IS THEREFORE ORDERED AND ADJUDGED that this case is dismissed

without prejudice pursuant to FED. R. CIV. P. 12(h)(3) for lack of subject matter jurisdiction.

SO ORDERED AND ADJUDGED this the 15th day of November, 2007.

s/ Louis Guirola, Jr.
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE